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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: April 30, 2015.

+ ITA 191/2003

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. N.P. Sahni, Sr. Standing Counsel
and Mr. Nitin Gulati, Jr. Standing Counsel.

versus

M/S EICHER LTD. Respondent
Through: Mr. Ajay Vohra, Sr. Adv., Ms. Kavita
Jha and Mr. Vaibhav Kulkarni, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The question of law framed in this case is as follows:-
“Whether the funding of the interest amount by way of a term loan amounts to actual payment as contemplated by Section 43B of the Income Tax Act, 1961?”
2. The assessee had claimed benefit of Section 43B of the Income Tax Act, 1961 in respect of conversion of its interest liability before Financial Institutions (IFCI, IDBI and HDFC Bank), asserting that this did not amount to “payment”. Thus, this entitled the assessee to the benefit. The Assessing

Officer (AO) disallowed the sum of ₹ 5,00,03,643/-. The CIT (Appeals) reversed the decision. The Income Tax Appellate Tribunal (hereinafter referred to as “the ITAT”) upheld the CIT (Appeals)’s order on the ground that payment under Section 43B included said constructive payment.

3. The Income Tax Act, 1961 (hereinafter referred to as “the Act”) was amended by Finance Act, 2006 w.e.f. 01.04.1989. The relevant provision added by virtue of this amendment reads as follows:-

“Section 43B, Explanation 3D.—For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (e) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or advance shall not be deemed to have been actually paid.”

4. An identical question had been framed by the Telangana and Andhra Pradesh High Court in *Commissioner of Income Tax-II v. Pennar Profiles Limited* (framed and decided) I.T.A. No. 289/2003 decided on 11.02.2015. After noticing the backdrop of similar facts, the High Court held as follows:-

“8. In this backdrop, we have perused the provisions contained in Section 43B of the Act, in particular, Explanation 3C thereof, which was inserted by the Finance Act, 2006 with retrospective effect from 01.04.1989. This provision was inserted in 2006 and hence, this Court in Mahindra Nissans case, had no occasion to deal with the case in the light of this provision. Insofar as the Karnataka High Court is concerned, though this provision was existing on the date of judgment, it appears that it was not brought to the notice of learned Judges and hence, the Division Bench proceeded to consider and decide the appeal of the assessee without referring to Explanation 3C appended to Section 43B of the Act.

9. *As a matter of fact, from reading of Explanation 3C, in our opinion, the question as raised in the present appeals stands answered without further discussion. This provision was inserted for removal of doubts and it was declared that deduction of any sum, being interest payable under clause (d) of Section 43B of the Act, shall be allowed if such interest has been actually paid and any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid. Thus, the doubt stands removed in view of Explanation 3C. This provision was considered by the Madhya Pradesh High Court in Eicher Motors Limited v. Commissioner of Income Tax to hold that in view of the Explanation 3C appended to Section 43B with retrospective effect from 01.04.1989, conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of Section 43B of the Act.*

10. *It is not in dispute that the assessment years with which we are concerned in the present appeals are covered by Explanation 3C, which was inserted by the Finance Act, 2006 with retrospective effect from 01.04.1989. In this view of the matter, the appeals filed by the Revenue deserve to be allowed. Accordingly, we answer the substantial question of law framed by us in favour of the Revenue and against the assessee. However, there shall be no order as to costs.”*

5. In light of the above development which occurred during the pendency of this appeal, the question of law framed has to be answered in favour of the Revenue.

6. Learned Counsel for the assessee relies upon the alternative submissions made – noticed by the CIT (Appeals) and the ITAT contending that the interest payment actually made for the concerned Assessment Year

(AY) 1993-94 at least ought to receive the benefit of the deduction under Section 43B. We noticed that this aspect was urged but was not considered by the ITAT since the larger issue was decided in favour of the assessee. This question is accordingly remitted to the AO who shall decide whether such payments were made and, if so, to what extent. If, in fact, such payments were made during the concerned AY, the benefit of Section 43B would, of course, be available.

7. The appeal is partly allowed in above terms.



S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

APRIL 30, 2015
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